

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

NABIL H. ELBERRY
Respondent

Case No.: I-02-72585

FINAL ORDER

I. Introduction

On December 6, 2002, the Government served a Notice of Infraction upon Respondent Nabil H. Elberry, alleging that he violated 21 DCMR 700.3 by failing to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on December 2, 2002 at 1466 Harvard Street, N.W., and sought a fine of \$1,000.

Respondent filed a timely answer with a plea of Deny, and I held a hearing on February 12, 2003. Nathaniel Hill, the inspector who issued the Notice of Infraction, appeared on behalf of the Government, and Respondent Nabil H. Elberry appeared on his own behalf. At the Hearing, Mr. Elberry moved to change his plea to Admit with Explanation, and I granted that motion without objection from the Government.

II. Summary of the Evidence

Mr. Elberry admitted that trash was overflowing the dumpster at a 12-unit apartment building he owns at 1466 Harvard Street, N.W. on December 2, 2002. He asserted that his trash

hauling service had missed a scheduled pickup on the previous day due to a snowstorm. He claimed that an ice buildup resulting from the storm was visible in the photographs submitted by the Government, Petitioner's Exhibits ("PX") 101-03. Mr. Elberry stated that the building is scheduled for twice-weekly trash pickups, but testified that he did not know the scheduled days for those pickups.

III. Findings of Fact

Mr. Elberry's plea of Admit with Explanation establishes that, on December 2, 2002, solid wastes were stored at his property in a manner that provided food, harborage or breeding places for rats. His explanation that the trash company missed a pickup on the previous day due to a snowstorm is not credible, for several reasons. First, Mr. Elberry did not know when trash pickups were scheduled. Without that knowledge, there is no basis for his claim that a previous day's pickup was missed. Indeed, December 1, 2002 was a Sunday, an unlikely day for a trash pickup to be scheduled at a residential building. Moreover, his claim that an ice buildup is visible in PX 101-03 is incorrect. There is no ice or snow apparent in any of those photographs, including in the specific area in front of the dumpster to which he referred during the hearing.

Mr. Elberry's lack of credibility demonstrates that, despite his plea, he has not accepted responsibility for the violation.

IV. Conclusions of Law

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

Mr. Elberry's plea of Admit with Explanation establishes that he violated § 700.3 on December 2, 2002. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.¹ Section 700.3 imposes strict liability upon an owner of property where a violation occurs. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995). Because the evidence does not support Mr. Elberry's claim that a snowstorm made it impossible for the trash to be collected, it is not necessary to decide in this case whether a violation of § 700.3 can be excused or mitigated due to an "act of God" (*i.e.*, an unexpected and severe natural event) that makes compliance impossible. Although there is no evidence that Mr. Elberry has a history of regulatory violations, that potentially mitigating factor is outweighed by his lack of credibility in providing an explanation. Accordingly, there will be no reduction in the fine amount.

¹ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **02/20/03**

John P. Dean
Administrative Judge